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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,754	04/16/2004	Scott Burgett	702.348	1222

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EXAMINER

GREGORY, BERNARR E

ART UNIT PAPER NUMBER

3662

DATE MAILED: 08/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/826,754

Applicant(s)


BURGETT ET AL.

Examiner

Bernarr E. Gregory

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Masumoto ('540) or Takayasu ('754).

Taking sole independent claim 1, in Figure 2 of Masumoto ('540), "an altimeter comprising a barometric pressure sensor" is shown as item 13 ("AIR-PRESSURE ALTIMETER"), and "a GPS unit" is shown in Figure 2 of Masumoto ('540) as item 11 ("GPS RECEIVER"). As for the claim 1 "housing for housing said altimeter and said GPS unit ...", inherently the device of Masumoto ('540) would be in a housing in that it is in a vehicle, and such electronics would not be mounted in a vehicle without some sort of housing to protect the circuitry, at least from mechanical shock. As for the mention in claim 1 of calibration, please note item 18 in Figure 2 of Masumoto ('540).

As for the further limitations of dependent claim 2, these are fully met by Masumoto ('540) in that the outputs are continuously fed from items 11 and 13 of Figure 2 of Masumoto ('540) into item 18 of Figure 2 of Masumoto ('540).

As for the further limitations of dependent claim 3, these are fully met by the "three-dimensional position data" mode of operation of Masumoto ('540) (e.g., as mentioned in the Abstract of Masumoto ('540)). Please note at column

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1, lines 30-35 of Masumoto ('540), that it is made clear that "three-dimensional position" includes "altitude."

As for the further limitations of dependent claim 4, the Masumoto ('540) "AIR-PRESSURE ALTIMETER (item 13 of Figure 2) plainly determines the altitude at which it is located. Please note, for example, column 4, lines 17-25 of Masumoto ('540) with respect to the Masumoto ('540) "AIR-PRESSURE ALTIMETER (item 13 of Figure 2).

As for the further limitations of dependent claim 5, these are fully met by Masumoto ('540) in that the Masumoto ('540) apparatus is unitary and continuously takes account of the outputs of both the "GPS RECEIVER" (item 11 of Figure 2) and of the "AIR-PRESSURE ALTIMETER" (item 13 of Figure 2) as the Masumoto ('540) apparatus performed calibration in the "ALTITUDE DATA CAALIBRATOR" (item 18 of Figure 2).

As for the Takayasu ('754) reference, the remarks are substantially those given above with respect to Masumoto ('540) in that insofar as can be understood from the English language abstract of Takayasu ('754), it is an apparatus with a barometric altimeter and a GPS unit where the altitude data is each is used in correction or calibration.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Masumoto ('540) or Takayasu ('754).

It is noted that, in general, the dimensions or size of an apparatus are not sufficient to patentably distinguish from applied prior art if the prior art functions in the same manner as the claimed invention. Please see MPEP 2144.04, especially the section with the heading "Changes in Size/Proportion." Please especially note Gardner v. TEC Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984) in that section of the MPEP.

With respect to the feature of portability as claimed in dependent claim 6, please note that in a broad sense anything that is not absolutely immovable is, in fact, "portable." Thus, each of Masumoto ('540) and Takayasu ('754) shows a portable housing.

As for the claim 6 feature of the device being "handheld," this is not shown in either Masumoto ('540) or Takayasu ('754), but it would have been obvious from the general disclosures of either Masumoto ('540) or Takayasu ('754) that the apparatuses of these reference could be implemented in various sizes depending upon the particular desired use of either the Masumoto ('540) or Takayasu ('754) apparatus. By being silent as to the size of the disclosed apparatuses, each of Masumoto ('540) and Takayasu ('754) is directed to any size of the apparatuses that are disclosed, including the old and well-known "handheld" size.

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Shinagawa ('635) and Sekine et al ('529) are of general interest for showing devices using an altimeter together with a GPS unit as in Applicants' claimed invention.

Burgett et al ('298) and Burgett et al ('449) are cited as having been considered for double patenting purposes in that they are patents issued from applications that are related to the instant application.

Beason et al ('485) is of interest for showing a "portable, handheld" electronic device that uses a barometric altimeter and a GPS unit as in Applicants' claimed invention.

Beason et al ('540) is of interest for showing a "portable, handheld" electronic device that uses a barometric altimeter and a GPS unit as in Applicants' claimed invention.


Johnson ('448) and Johnson ('479) are each of interest for showing devices using a barometric altimeter and a GPS unit together to correct for altitude errors.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bernarr E. Gregory whose telephone number is (703) 306-5765. The examiner can normally be reached on weekdays from 7:30 AM to 4:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas H. Tarcza, can be reached on (703) 306-4171. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Bernarr E. Gregory
Primary Examiner
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